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CHIEF CLERK'S OFFICE

ILLINOIS BELL TELEPHONE COMPANY,

Complainant,

vs.

MCI WORLDCOM COMMUNICATIONS, INC.,
MCIMETRO ACCESS TRANSMISSION SERVICES, LLC.,
AND MCI WORLDCOM COMMUNICATIONS, INC.,
f/k/a MFS INTELENET,

Respondents.

Docket No. 02-0443

**PUBLIC VERSION
(Confidential information has been redacted.)**

**VERIFIED OPPOSITION OF MCI TO SBC ILLINOIS' BRIEF IN SUPPORT OF
AMENDED VERIFIED MOTION FOR ENFORCEMENT OF ORDER GRANTING
EMERGENCY RELIEF**

MCI WorldCom Communications, Inc. and MCImetro Access Transmission Services, Inc. (collectively referred to as "MCI"), by and through their attorneys, submit this Opposition to the Brief in Support of Amended Verified Motion for Enforcement of Order Granting Emergency Relief filed by Illinois Bell Telephone Company ("SBC Illinois Brief")¹ and state as follows:

¹ SBC Illinois, on November 21, 2002, filed a "Petition for Enforcement of Order Granting Emergency Relief" (the "Petition") pertaining to the time period after the WorldCom, Inc. July

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21, 2002, Chapter 11 filing. On December 20, 2002, SBC Illinois filed a motion to file its "Amended Petition For Enforcement of Order Granting Emergency Relief" ("Amended Petition") to replace its previously filed Petition. On January 13, 2002, it filed its "Verified Motion For Enforcement of Order Granting Emergency Relief" ("Verified Motion") to replace its Amended Petition. On January 17, 2003, SBC Illinois filed its "Motion for Leave to File Amended Verified Motion" ("SBC Illinois Motion") to replace its previously filed Verified Motion.

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It is well settled that interlocutory orders are extinguished as soon as the underlying case is dismissed. See Bryan v. Smith, 174 F.2d 212, 214-15 (7th Cir. 1949), where the court stated, in part, as follows:

When a case is voluntarily dismissed by the parties, what is the effect of such action? The general rule on voluntary dismissal is stated as follows in 17 Am.Jur., Dismissal and Discontinuance, Sec. 63: 'It is a well-settled rule that after a plaintiff has suffered a nonsuit or has dismissed his cause of action, no counterclaim existing, the court is without further jurisdiction and has no right to render any judgment either for or against the plaintiff. The parties are out of court for every purpose other than to carry the order of dismissal or nonsuit into effect or to vacate or modify it; * * *.'

It is as if the suit had never been brought. . . . No steps can be taken upon the suit after dismissal. . . . Any steps taken thereafter are a nullity. . . . The dismissal 'carries down with it previous proceedings and orders in the action, and all pleadings, both of plaintiff and of defendant, and all issues, with respect to plaintiff's claim.' 27 C.J.S., supra, 39.

If the rule is that dismissal leaves the situation as if the suit had never been filed, what right of procedure could possibly stem from something that never existed? If this suit had never been brought, how could this ancillary proceeding ever have been started? To ask the question answers it. . . . There can be no ancillary proceeding to enforce an interlocutory order made in a suit that has been dismissed, as long as the judgment of dismissal remains on the record.

(Citations omitted). See also Sisters of Providence v. Van Linder, 663 P.2d 956 (Alaska 1983) ("A dismissal without prejudice renders the proceedings a nullity and leaves the parties as if the action had never been brought. . . . Thus, no further proceedings in the action are proper, including a proceeding to enforce an interlocutory order made before dismissal"); and Bell v. Kitt, 655 S.W.2d 881, 882 (Mo.App. S.D. Aug 08, 1983).

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INTRODUCTION

The SBC Illinois Amended Verified Motion raises the issue of whether MCI has complied with the requirements of the Commission's Order Granting Emergency Relief dated July 8, 2002 (the "Order"). The Order required MCI to instruct sales and other representatives to refrain from certain specified conduct. MCI has done so. Indeed, Illinois Bell Telephone Company ("SBC Illinois") admitted in discovery that it has no evidence to the contrary. Despite this admission, SBC Illinois claims for the first time in the SBC Illinois Brief that it cannot

determine whether MCI complied with the stated requirements of the Order. This argument is without any merit. MCI fully and unambiguously complied with the written terms of the Order.

The Order also stated that MCI “should curtail slamming and misrepresentations” and that the Commission expected “results.” Exhibit 1 at p. 12.³ SBC Illinois, however, cannot in good faith maintain that MCI failed to curtail slamming and misrepresentation allegations or otherwise failed to achieve results. SBC Illinois’ own data shows that the number of allegations it claims to have received regarding MCI since the Order has consistently decreased to the point where February 2003 allegations were 67% less than June 2002 allegations.⁴ In the SBC Illinois Brief, SBC Illinois attempts to avoid the inevitable implications of this data by ignoring all complaint data dated after October 2002. SBC Illinois, however, cannot close its eyes and pretend its data does not exist just because the data shows a dramatic decrease in the number of MCI allegations.

MCI also can demonstrate that, in the overwhelming majority of the allegations relied upon by SBC Illinois dealing with post-Order⁵ conduct, MCI acted appropriately in changing the customer’s service, as it received the customer’s consent. This consent was verified by a recorded call between the customer and an independent third party verification company representative. MCI has achieved these impressive results through implementation of a

³ All references to exhibits are references to the exhibits attached to the Verified Opposition of MCI to SBC Illinois’ Amended Verified Motion unless otherwise stated.

⁴ In discovery, SBC Illinois only produced its internal complaint data through the month of February 2003.

⁵ A significant portion of the 320 allegations relied upon by SBC Illinois in its Motion relate to pre-Order conduct.

comprehensive array of policies and procedures to insure quality telemarketing sales. These policies and procedures are detailed in this memorandum.

SBC Illinois has failed to produce admissible evidence to support the validity of its allegations, even though it is SBC Illinois that carries the burden of proof. In response to MCI's analysis, SBC Illinois lowered its allegation figure and now claims that 34 allegations are uncontested by MCI, 36 allegations are otherwise valid, and 63 allegations are "questionable" because MCI obtained authority to make the switch from someone other than the customer of record. SBC Illinois' arguments are unsupported by fact or law. MCI fully contests the 34 "uncontested" allegations. After sixteen months and full discovery from MCI, SBC Illinois relies solely on hearsay evidence to support its allegations. Such hearsay evidence cannot support a violation of the Order as a matter of law. Furthermore, SBC Illinois' statement that 63 allegations are "questionable" is disingenuous. SBC Illinois knows that federal law permits a switch in these circumstances (where the person making the change is authorized as defined in FCC rules) and it is SBC Illinois' own practice to allow a switch of customers when approved by persons other than the customer of record.

SBC Illinois further argues that MCI's documents prove a violation of the Order in that the documents show: (1) continued training of MCI employees on the issues outlined in the Order; and (2) MCI's termination of employees that did not adhere to the training. Contrary to SBC Illinois' suggestion, these documents demonstrate that MCI complied with the Order. The fact that MCI provided ongoing training and terminated employees that ignored the training shows that MCI treated its obligations under the Order seriously. In fact, had MCI not continued

its training or not terminated employees that engaged in misconduct, SBC Illinois would have claimed that those facts would show a violation of the Order.

Finally, the SBC Illinois Motion should be barred by the doctrine of unclean hands. As set forth below, the evidence suggests that SBC Illinois has been improperly soliciting complaints from consumers who do not believe that they have been wronged in any way by MCI. MCI also approached SBC Illinois in July 2002 and informed SBC Illinois of the steps MCI was taking to comply with the Order. MCI asked SBC Illinois if it believed any additional steps were necessary. Rather than respond to MCI with any concerns and attempt to reach a resolution of the matter, SBC Illinois adopted a strategy of deceit and ambush. It waited until November 21, 2002 and filed the Petition coupled with a national press release. The SBC Illinois Petition is part of a broader national campaign by Southwestern Bell Corporation ("SBC")⁶ against MCI as a result of MCI's entry into the local market in various states where SBC once held a monopoly.

In short, the evidence conclusively demonstrates that:

- MCI fully and completely complied with the stated requirements of the Order;
- MCI significantly curtailed the number of slamming and misrepresentation allegations; and
- SBC Illinois has failed to produce admissible evidence of valid complaints against MCI.

MCI, therefore, respectfully requests that the Administrative Law Judge find there has been no violation of the Order.

I. STANDARD OF REVIEW AND BURDEN OF PROOF

The SBC Illinois Motion is akin to a contempt proceeding as the motion alleges a violation of a valid order. Under Illinois law, the movant bears the burden of establishing a willful violation of an order to prove contempt. Tri-State Coach Lines v. Illinois Commerce Commission, 202 Ill. App. 3d, 206, 211, 559 N.E. 2d 869, 872 (1990), appeal denied by Tri-State Coach Lines, Inc. v. Illinois Commerce Commission, 151 Ill. Dec. 394, 564 N.E. 2d 849 (1990). In order to succeed on its motion, therefore, SBC Illinois has the burden of proving that: (1) MCI violated the Order; and (2) MCI acted willfully.

Both MCI and SBC Illinois agree that MCI was required to give the four instructions listed on page 13 of the Order. SBC Illinois, however, claims that the sentence in the analysis section of the Order that MCI “should curtail slamming and misrepresentations” also imposed a requirement on MCI to reduce the number of allegations received by SBC Illinois about MCI. Although MCI questions whether this statement (which was not included in the Ordering Paragraphs) was intended to impose an additional requirement on MCI, the issue is moot. SBC Illinois’ own data shows MCI significantly curtailed slamming and misrepresentation allegations after the date of the Order. Accordingly, under either interpretation of the Order, MCI has met and exceeded its obligations.

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SBC is the parent company of SBC Illinois.

A fair reading of the Emergency Order further suggests that the existence of a valid complaint would not constitute a violation of the Order. SBC Illinois requested an Order that required MCI to refrain from slamming and from making misrepresentations. Exhibit 1 at p. 11. The Commission refused to give SBC Illinois' requested Order. Rather, it required MCI to instruct its employees and representatives to refrain from engaging in four specified areas of conduct. Exhibit 1 at p. 13. It further stated that it expected MCI to "curtail slamming and misrepresentations" and that it expected "results." *Id.* at p. 12. While existing laws prohibit slamming and misrepresentations, the Order did not impose these requirements on MCI (although MCI acknowledges it is prohibited by existing laws from slamming or making misrepresentations).

As the moving party, SBC Illinois has the burden of proving the existence of valid complaints. *See, e.g., Iwanski v. Streamwood Police Pension Bd.*, 232 Ill. App. 3d 180, 184, 596 N.E. 2d 691, 694 (1992) ("[A] plaintiff to an administrative proceeding has the burden of proof and relief will be denied if he fails to sustain that burden."). Simply stating, without more, that SBC Illinois received allegations does not constitute sufficient evidence of a valid complaint. *See Kurdi v. Du Page County Housing Authority*, 161 Ill. App. 3d 988, 994, 514 N.E. 2d 802, 806 (1987) (In proceeding before administrative agency, hearsay "may not be considered in reaching a decision, and any factual determination based on hearsay and unsupported by other

competent evidence must be reversed.”); See also Morelli v. Ward, 315 Ill. App. 3d 492, 497, 734 N.E. 2d 87, 91 (2000) (hearsay evidence inadmissible in an administrative proceeding).⁷

For almost all of the allegations, SBC Illinois relies solely on hearsay evidence – its own statements that it received allegations from customers.⁸ To meet the requirements of providing admissible (nonhearsay) evidence, SBC Illinois needed to produce statements or other evidence from the consumers themselves – something SBC Illinois failed to do in all but a handful of cases. In fact, SBC Illinois stated it sent written affidavits to all of the people it collected allegations from, and only 24 of the 333 from August through October 2002 were signed and returned. Of the affidavits that were received, some of them related to customer misunderstandings regarding the taxes and surcharges associated with the service, and made no allegation of company misrepresentation, despite SBC Illinois’ claims to the contrary. MCI does not have any burden to disprove an allegation until SBC Illinois has presented admissible evidence sufficient to show that the allegation is more likely than not to be valid. Because SBC Illinois has failed to meet its burden, the Amended Verified Motion must be denied.

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Further, the volume of complaints is, at most, circumstantial evidence of a violation of the Order. When circumstantial evidence is relied upon, that evidence must support an inference which is reasonable and probable, not merely possible. See Pyne v. Witmer, 129 Ill.2d 351, 543 N.E.2d 1304 (1989). When a party seeks to rely on circumstantial evidence, the conclusion sought must be more than speculative, it must be the only probable conclusion that could be drawn from the known facts. Williams v. Chicago Board of Education, 267 Ill.App.3d 446, 642 N.E.2d 674 (1994). If the circumstantial evidence allows for an inference of the nonexistence of a fact which is just as probable as its existence, then the conclusion that it exists is not a reasonable inference, but rather a matter of speculation, surmise, and conjecture. Consolino v. Thompson, 127 Ill.App.3d 31, 468 N.E.2d 422 (1984). Speculation, surmise and conjecture are not proof, and will not support a reasonable inference of causation. Thacker, 151 Ill.2d at 354, 603 N.E.2d 449; Smith, 137 Ill.2d at 232, 560 N.E.2d 324. As set forth in the text, the complaint volume evidence does not lead to the probable conclusion of a violation of the Order.

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SBC Illinois’ evidence essentially boils down to SBC Illinois’ statements that customers told SBC Illinois that MCI engaged in wrongful conduct. Such statements are classic hearsay statements.

In the Emergency Order, the Commission allowed the use of hearsay statements on the grounds that it was an emergency motion and the proceedings were at a "preliminary stage." Exhibit 1 at p. 7. The current situation is far different. SBC Illinois has had over 16 months from the date of the Order to obtain nonhearsay evidence to support its allegations that violations of the Order occurred. In addition to this lengthy period of time, SBC Illinois obtained substantial discovery from MCI. Accordingly, unlike the Emergency Order proceeding, SBC Illinois cannot claim that it did not have the time or opportunity to obtain admissible evidence to support its allegations. The well-established rule that hearsay evidence is inadmissible in an administrative proceeding, therefore, should apply.

SBC Illinois' reliance on MCI Telecommunications Corp. v. Illinois Bell Telephone Company, 1997 Ill. PUC LEXIS 914 (Dec. 17, 1997) ("Three-Way Calling Case") is misplaced for several reasons. First, in the present case, SBC Illinois relies solely on hearsay evidence to support the alleged violation of the Order – SBC Illinois representatives claim that customers told them that MCI said or did certain things. This is classic unreliable hearsay.⁹ In the Three-Way Calling Case, MCI presented the direct testimony of a monitor who directly heard SBC Illinois acting improperly on three-way calls.¹⁰ Similarly, MCI submitted summaries from persons who directly heard statements by SBC Illinois on three-way calls. Unlike the testimony and summaries in the Three-Way Calling Case, the SBC Illinois summaries of allegations are not

⁹ The problems with such hearsay statements are evidenced by the TPV recordings that show the switches were valid and the investigation described in Section VI below which shows many of the alleged customer complainants stated that had never even complained to SBC Illinois.

¹⁰ Testimony concerning statements made by SBC Illinois from a person who heard the statements is not improper hearsay because SBC Illinois is a party.

statements by any person who witnessed the alleged transactions. As such, they constitute impermissible hearsay.¹¹

SBC Illinois suggests that the present case is similar to the Three-Way Calling Case because both cases involved violations of an order by individuals despite policies that existed to prohibit the conduct. This suggestion is patently false. In the Three-Way Calling Case, the Commission found that SBC Illinois' own policies and procedures contributed to a violation of the order in that they approved of conduct prohibited by the prior order at issue in that case. Moreover, SBC Illinois did not present any evidence that it was monitoring its employees or taking any actions against employees that acted improperly. In the present action, case, the evidence shows that MCI has actively complied with the Order. It has trained its employees, monitored its employees, and as pointed out by SBC Illinois, terminated those employees that did not adhere to the training. Accordingly, SBC Illinois' attempt to equate the present action with the Three-Way Calling Case is without any merit.

II. THE UNDISPUTED EVIDENCE DEMONSTRATES THAT MCI HAS COMPLIED WITH THE ORDER.

MCI complied with the Order. It issued the specific instructions required by the Order. It obtained demonstrable results. SBC Illinois, moreover, has failed to produce admissible evidence of any violations of the Order. Accordingly, the SBC Illinois Amended Verified Motion is without merit and should be denied.

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There is nothing in the written decision in the Three-Way Calling Case that even suggests that the Commission believed it was relying on hearsay testimony or that suggests that hearsay testimony can support a finding of a violation of an Order.

A. MCI Complied with the Written Requirements of the Order

In the Order (attached as Exhibit 1), the Commission required MCI to issue four sets of instructions, as set forth below:

WorldCom (including each of the WorldCom affiliates named in the prefatory portion of this Order) is ordered immediately to instruct all of its sales representatives, its third-party verification representatives, and the sales and third-party verification representatives of any third-party vendors performing such functions on WorldCom's behalf, to refrain from any of the following conduct: (1) failing to obtain the customer's authorization of any account changes prior to execution of a letter of authorization or an electronic authorization, or prior to commencing the third-party verification process; (2) obtaining a letter of authorization, an electronic authorization, or a third-party verification from any customer who has not agreed to account changes requiring such authorization or verification; (3) failing to confirm explicitly with the end user all account changes to be authorized or verified as a part of the authorization or verification process; and (4) making any representation stating or implying that Ameritech is going out of business, that Ameritech is in any way affiliated with WorldCom, or that WorldCom is assuming any of Ameritech's accounts, or conveying any other false or misleading impression regarding Ameritech or any of its affiliates.

Order at 13-14.

MCI provided supplemental training materials to all sales representatives, sales representatives supervisors, and third-party verification representatives in July, 2002, to ensure compliance with the Order and to promote higher quality telemarketing sales. Exhibit 2 at p. 4. The supplemental training directly addresses the instructions required by the Order. Id. In compliance with instructions (1) and (2) of the Order, MCI instructed its sales representatives to fully explain any services ordered or changes made to a customer's account and to use the mandatory call summarization (also referred to as the "Required Follow Through") on every

sales call. Id.; Confidential Exhibit 3 at p. 14. MCI's "Required Follow Through" process mandates that, at the conclusion of every sales call, the telemarketing representative review with the customer all essential terms of the sale to insure that the customer fully understands the products and services he has ordered during the sales call. Exhibit 2 at p.4; Confidential Exhibit 3. MCI also provided the same supplemental training to sales representative supervisors. Confidential Exhibit 3 at p. 20.

In compliance with instructions (2) and (3) of the Order, MCI caused supplemental instructions to be issued to third-party verification representatives to ensure that they explicitly confirmed all account changes with the customer as part of the verification process. Exhibit 2 at pp. 4-5; Confidential Exhibit 4. MCI's third-party verification scripts, which are referenced in the supplemental training, also require this conduct on the part of the third-party verification representatives. Sample scripts are attached as Confidential Exhibit 5. In response to instruction (4) of the Order, MCI issued supplemental instructions mandating that sales representatives make no misrepresentations about other carriers, including the specific representations described in (4), and advised the representatives that a violation of this policy would result in corrective action, up to and including termination. Exhibit 2 at p. 5; Confidential Exhibit 3 at pp. 13-17. MCI sales representative supervisors received training on this issue as well. Exhibit 2 at p. 5; Confidential Exhibit 3 at pp. 19-24. This training was again reinforced in December 2002.

The supplemental training materials were provided to all sales representatives and sales representative supervisors pursuant to a Competitive Misrepresentation prevention program established by MCI. Exhibit 2 at p. 5. Upon completion of this program, all sales representatives and supervisors were required to review and complete a competitive misrepresentation

acknowledgment form. Id. By signing this form, each representative acknowledged that he or she was committed to the following practices:

- Truthfully and accurately represent the company, its products and its services to customers and prospects.
- Act ethically on all products, services, policies, and procedures.
- Submit only those sales to TPV [third-party verification] in which the representative has a good faith belief that the customer understands and agrees to terms of sale.

The representative also acknowledged that:

- He has completed the company's Competitive Misrepresentation Training Program and understands the Company's policies.
- He understood that failure to abide by these statements could result in disciplinary action, up to and including termination. Id. at pp. 5-6; Exhibit 3 at pp. 18, 24.

MCI's efforts, however, did not end with the supplemental training in July, 2002. Representatives are continually reminded of MCI's policies and procedures through, among other things, periodic training flashes and annual quality training. Exhibit 2 at p. 6. Examples of such training flashes that have been issued since July 2002 which relate to the subjects of the Order are attached as Exhibit 6. MCI's policies are then enforced through internal monitoring, external allegation research and appropriate disciplinary actions. Exhibit 2 at p. 6.

In further response to the Order, on July 24, 2002, MCI's Vice President of Consumer Affairs and Quality met with top sales management to discuss the issues that were raised in SBC Illinois' complaint and in the Order, and to discuss training needs. See Testimony of Sally McMahon attached as Exhibit 2 at pp. 3-4. On July 30, 2002, MCI's Vice President for Program Management and Knowledge Resources and the Senior Vice President of Sales addressed the call center directors and sales management staff, informed them of the issues addressed in the

Order, explained the severity of the allegations that had been raised, and reinforced that the sales staff must be retrained on these issues. Id.

To ensure that SBC Illinois was satisfied with these remedial measures, MCI provided its supplemental training materials to SBC Illinois on or about July 30, 2002. Exhibit 2 at p. 6. On that date, Sally McMahon and Matthew Pachman of MCI met with SBC Illinois representatives Richard Quist (General Attorney, Marketing Operations) and Karen Mrachek (Vice President, Sales and Operations) to discuss SBC Illinois' pending complaint before the Commission, possible resolutions, as well as a methodology to handle consumer allegations on a going-forward basis. Id.

During the meeting, MCI shared with SBC Illinois copies of the new training documents that had been crafted in response to the Order, and described its disciplinary and monitoring policies for telemarketing representatives. Exhibit 2 at p. 6. At the conclusion of the meeting, MCI asked if it had addressed SBC Illinois' concerns. SBC Illinois representatives replied that they would respond to MCI with their position. Id. SBC Illinois, however, never responded that MCI's actions were insufficient to comply with the Order until November 21, 2002, when it filed a petition in this action and issued a press release attacking MCI's alleged practices. Id. at p. 7. A copy of this press release is attached as Exhibit 7. MCI's conduct demonstrated a willingness to work together in good faith to promptly resolve consumer allegations. SBC Illinois' conduct demonstrates that it is engaging in the practice of deceit and ambush.

The evidence described above proves that MCI instructed representatives as required by the Order, and has fully complied with the Order's mandate. SBC Illinois has been aware of the instructions provided to MCI representatives in compliance with the Order since July 30, 2002,

and yet did not raise any issue of non-compliance until SBC Illinois filed the Petition and issued its press release on November 21, 2002. Moreover, in its discovery responses, SBC Illinois admitted in its initial response that it had no evidence that MCI had failed to comply with the Order. Specifically, MCI asked SBC Illinois to describe all facts in support of its contention that MCI had failed to comply with the Order, if SBC Illinois so contended. SBC Illinois replied in pertinent part:

“SBC Illinois has not evaluated the issue described in this data request. It thus cannot respond to the request...” Ameritech Illinois’ responses to MCI’s Second Set of Data Requests (“SBC Illinois Second Set Responses”) Responses 1 and 5 (attached as Exhibit 8).

At the hearing on the Motion to Compel held on March 3, 2003, the Administrative Law Judge ordered SBC Illinois (among other things) to supplement its prior response to specifically state all facts and documents supporting its contention that MCI had failed to comply with the Order. See transcript at pages 120-125, attached as Exhibit 9. SBC Illinois supplemented its Response to Request No. 5 on April 7, stating that the only evidence it had of non-compliance with the Order by MCI was the number of allegations it had received since the Order. See Exhibit 10. At the time SBC Illinois supplemented its response, it had possessed for several weeks the training materials that MCI had provided to telemarketing representatives and third-party verification representatives in compliance with the remedial actions addressed in the

Order.¹² Thus, in its response, SBC Illinois tacitly admitted that the training materials that MCI supplied are sufficient to comply with the Order.

Despite its prior discovery responses, SBC Illinois now claims for the first time that MCI's response may not have met all the requirements of the Order. SBC Illinois suggests that MCI is being unclear about the dates when MCI provided its training and that Ms. McMahon "does not describe the training MCI provided." This argument must be rejected for several reasons. First and foremost, as set forth above, MCI did comply with all of the requirements of the Order and SBC Illinois has no basis for claiming otherwise. The testimony of Ms. McMahon could not be more clear:

MCI provided supplemental training materials to all sales representatives, sales representatives supervisors, and third party verification representatives in July, 2002, to ensure compliance with the Order and to promote higher quality telemarketing sales. The supplemental training directly addresses the instructions required by the Order.

See Testimony of Sally McMahon attached as Exhibit 2. Accordingly, the uncontradicted testimony from MCI is that all of the instructions required by the Order were given to "all sales representatives, sales representatives supervisors, and third party verification representatives in "July 2002." As set forth above and in Exhibit 2, the testimony of Ms. McMahon describes the training provided in great detail. Accordingly, SBC Illinois has no basis for claiming that MCI did not comply with the written requirements of the Order.

¹²

These same training materials had previously been supplied to SBC Illinois in its July 30, 2002 meeting with MCI representatives. Exhibit 2 at p. 6.

Second, SBC should be barred from raising the issue of compliance on the grounds that SBC Illinois did not disclose this argument in response to discovery requests that sought all bases for the alleged violation of the Order. See Exhibits 8 and 10. Finally, SBC Illinois should be barred from claiming that MCI's training in response to the Order was insufficient because MCI presented the training to SBC Illinois in July 2002 and asked whether SBC Illinois believed the training was sufficient. SBC Illinois never claimed the training was lacking in any way. If SBC Illinois believed that additional training was needed, it should have said so in July 2002 – not November 2003.

B. MCI Achieved Dramatic and Substantial Results

SBC Illinois also contends that MCI has violated the Order because: (1) SBC Illinois purportedly received a high rate of slamming and misrepresentation allegations against MCI after the Order;¹³ and (2) MCI allegedly generates more such allegations than any other carrier in Illinois. These allegations fail to establish a violation of the Order for several reasons.

1. MCI Has Achieved Extremely Low Volumes of Complaints As Compared to New Service Installations in Illinois and SBC Illinois' Own Experience Shows MCI's Allegation Rate Continues to Decrease

The essence of SBC Illinois' Motion is that MCI has allegedly violated the Order because MCI failed to achieve the "results" required by the Order. SBC Illinois' own statistics, however, demonstrate that the allegation rate for the most recent reported month – February 2003 – is 67%

¹³ SBC Illinois originally claimed that SBC Illinois received higher rates of slamming and misrepresentation allegations against MCI in the two months postdating the Order compared to the two months predating the Order. Apparently SBC Illinois now concedes that this allegation is without merit as the argument is absent from the current SBC Illinois Motion.

lower than the allegation rate for the month immediately preceding the Order. According to SBC Illinois, the number of allegations received by SBC Illinois pertaining to MCI for the months April 2002 through February 2003 are as follows:

Date	# of Complaints
4/02	157
5/02	110
6/02	109
7/02	127
8/02	133
9/02	124
10/02	76
11/02	62
12/02	67
1/03	59
2/03	36

See Exhibit 14 (documents provided by SBC Illinois in discovery). SBC Illinois did not provide MCI with complaint data after February 2003.

The number of SBC allegations against MCI as a percentage of installs has also decreased substantially since the date of the Order. (Confidential: XXXXXX XXXXXX

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XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX

XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XX) It is important to keep in mind that these numbers are unsubstantiated allegations, the vast majority of which have

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This statistic is based upon MCI installation data and SBC's alleged complaint data. SBC Illinois supplied information during discovery which substantially understated the number of MCI installations of local service in Illinois. Exhibit 15 at p. 3-4. While SBC Illinois stated it would provide corrected installation data for MCI and its competitors and the briefing schedule was modified to allow more time for this production, MCI has still not received this

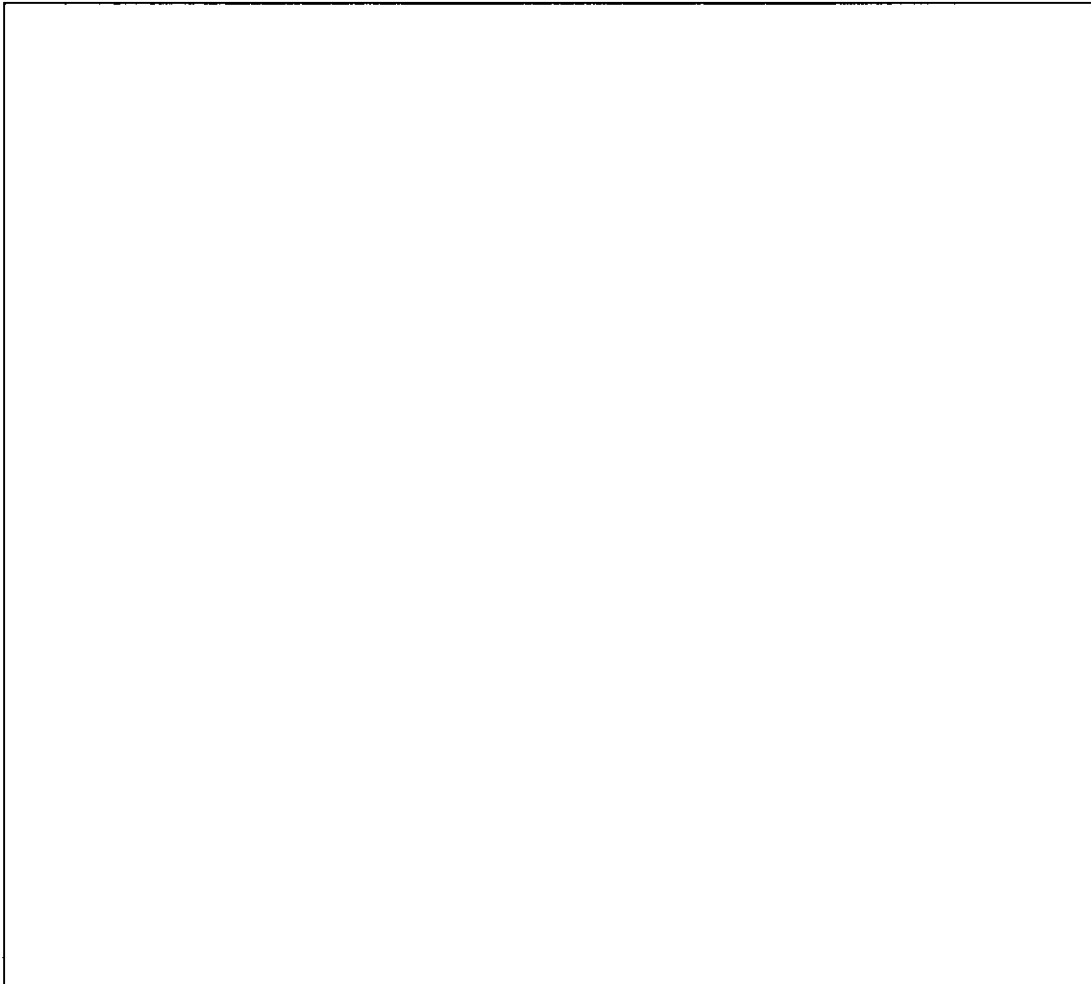
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been disproven by clear, recorded TPV evidence. This represents a decrease of over 67%. A chart showing SBC Illinois allegations as a percentage of new installs is set forth below.

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information. MCI identified this fact in its initial Opposition Brief and SBC Illinois has never denied it.

CONFIDENTIAL CHART
Complaints as a Ratio of New Installs



It is simply astonishing that SBC Illinois contends that MCI has not obtained “results” in the face of this compelling evidence to the contrary.¹⁵

MCI continually strives to improve its sales quality, and has a zero tolerance policy for intentional misrepresentations and other serious wrongful conduct. **(Confidential: XXXXXX**

¹⁵

These statistics are even more striking when one considers that there is credible evidence to suggest that SBC Illinois has been engaging in a campaign to artificially inflate the number of complaints against MCI. This evidence is discussed in Section V.

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XXXXXX XXXXXX XXXXXX XXXXXX XX) Thus, MCI's extensive policies and procedures for ensuring quality sales, which are described in detail in Section V below, are proving effective in limiting complaints in Illinois.

2. An Analysis Of The Complaints Cited By SBC Illinois Demonstrates That In The Overwhelming Majority Of Complaints MCI Acted Appropriately In Changing The Customer's Service

In the discovery posed to MCI, SBC Illinois initially forwarded 320 allegations for different telephone numbers. MCI and SBC Illinois subsequently have agreed that 80 of these allegations were based upon alleged conduct that would have occurred prior to July 21, 2002.¹⁶ Exhibit 15 at p. 4. Consequently, SBC Illinois has withdrawn these allegations.¹⁷ Thus, at least 25% of the allegations upon which SBC Illinois initially relied when it filed its motion could not have been prevented by the remedial actions MCI took pursuant to the Order – either because the alleged wrongful conduct upon which these allegations were based occurred before the Order was entered or before MCI had an opportunity to implement the Order. MCI has analyzed the remaining 240 allegations. The results of that analysis are summarized in the table below.

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ALLEGATION ANALYSIS TABLE

Valid TPV proving verification of authorized change to MCI	212
No services changed to MCI	6
Complaints conclusively disproven by TPV or lack of service change SUBTOTAL:	<u>218</u>
TPV cannot prove or disprove allegation	<u>15</u>
MCI Switch Was in Error	
• TPV Procedural Error	4
• Wrong Data from Customer	1
• Evidence of Improper Conduct	<u>2</u>
Not Verified SUBTOTAL:	<u>7</u>
TOTAL:	240

See Exhibit 15.

Notwithstanding the fact that SBC Illinois has the burden of proof, MCI can conclusively demonstrate through its TPV recordings or the absence of a service switch that there is no validity to 218 of 225 slamming or certain misrepresentation allegations received from SBC Illinois. See Exhibit 15 at p. 4-5. Of those 218 invalid allegations, 190 are identified on Exhibit 17 under SBC's "Allegation" heading as "Never Authorized Change," 11 are "Wanted info., local switched," and 4 are "Wanted LD, local switched." (The quoted phrases are the terms used by SBC Illinois to describe the allegations). In all these cases but one,¹⁸ MCI has TPV recordings in which the customers clearly authorized changes in local service to MCI. In seven

cases, the SBC Illinois allegation listed was "Said Were Ameritech." For each of these seven cases, MCI has a TPV recording in which the customer confirmed that he understood that he was switching to MCI service. In six cases, there was no unauthorized change because no switch of service occurred. Id. In seven cases of these 225, MCI has concluded that a service switch should not have occurred. Id. at pp. 4-5. As set forth in Section IV, MCI has extensive policies and procedures in place to prevent such unauthorized switches, and imposes serious consequences upon personnel who fail to adhere to these policies.

Thus, of those which can conclusively be proven or disproven, over 95% of SBC's slamming and related allegations against MCI are factually incorrect. A copy of the TPV files and a chart summarizing the content of those files are attached as Confidential Exhibits 17 and 21.

**a. Miscellaneous Alleged Misrepresentations
Which TPV Process Cannot Prove or Disprove**

In 15 cases, SBC alleges certain miscellaneous misrepresentations during the sales call, which cannot be proven or disproven from the TPV recordings, as the verification calls are scripted and designed primarily for the prevention of unauthorized installation. Exhibit 15 at p. 4. The TPV script requirements, which are detailed in Section IV.D., are rightly focused on verification of the PIC change, and are not designed to review every possible permutation of the preceding sales call. Exhibit 15 at p. 6. For example, SBC Illinois alleges that a MCI sales representative indicated to a customer that "MCI was taking over the area code." Such

(footnote continued from previous page)

¹⁸

(Confidential: XXXXXX XXXXXX XXXXXX XXXXXX)

(footnote continued to next page)

allegations of statements made during the sales call are not covered by the TPV call. Id. As discussed in Section IV, however, all MCI representatives are trained to be honest and ethical in their interactions with customers, must annually execute a Code of Conduct so attesting, and received specific training regarding the issues which were the subject of the Order.

The fact that TPV does not address these allegations, however, does not lead to an inference that wrongful conduct occurred. SBC Illinois, of course, maintains the burden of proof. Moreover, MCI's records of customer contacts cast considerable doubt on the validity of many of these allegations. Confidential Exhibit 18 provides a summary of all MCI contacts with these 15 complainants after the service switch. Exhibit 15 at p. 5. MCI had valid TPV for all 15. As set forth in Confidential Exhibit 18, five customers never made any complaint to MCI, thereby undermining SBC Illinois' contention of wrongful conduct. The other ten customers did have contact with MCI, but during that contact never made any allegation of misrepresentation by MCI about its relationship with SBC Illinois. Exhibit 15 at p. 5; Confidential Exhibit 18. In discovery, SBC Illinois has provided affidavits supporting its contentions for only six out of these 15 customers. Id. at p. 6. Accordingly, SBC Illinois cannot meet its burden of showing wrongful conduct for the vast majority, if not all, of these 15 complaints. MCI has shown, through unassailable TPV evidence, that over 95% of the slamming and certain misrepresentation complaints proffered by SBC Illinois were without merit. There is no reason to believe that the remaining alleged misrepresentation complaints advanced by SBC Illinois have any higher level of validity.

(footnote continued from previous page)

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XXXXXX)

b. Procedural Error

A review of the TPV recordings demonstrates that, for four of the complaints labeled "Never Authorized Change," the TPV representative who conducted the verification call failed to adhere to the proper procedure. Exhibit 15 at p. 6. In all four instances, the proper procedure for the TPV representative would have been the cancellation of the order. Id. These instances are classified as "TPV procedural error" on the accompanying table. Id.

c. Wrong Data from Customer

For one of the ANIs for which SBC Illinois alleges that there was an unauthorized switch to MCI, MCI has determined that, although there was a valid third party verification for the ANI, services were erroneously installed. Exhibit 15 at p. 7; **(Confidential: XXXXXX**

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XXXXXX) This instance is classified as "Wrongful Data from Customer" on Confidential Exhibit 17.

d. Evidence of Improper Misconduct

In two instances, statements made by the customers during the verification call indicated that the related telemarketers may have made misrepresentations to the customers. Exhibit 15 at p. 7. These instances are classified as "evidence of improper conduct" on the accompanying table. As set forth in Section II, MCI telemarketing representatives are trained to provide truthful information to customers, and must annually sign a Code of Conduct reaffirming this principle. The Company has established serious penalties, up to and including termination, for any failure to adhere to this policy.

Accordingly, SBC has not even created a factual dispute regarding MCI's compliance with the Order, much less met its burden of proof. MCI has complied with the mandate of the Order, and SBC Illinois' Amended Verified Motion should be denied.

III. SBC ILLINOIS' ALLEGATION THAT THE NUMBER OF CUSTOMER COMPLAINTS PROVES A VIOLATION OF THE ORDER BLATANTLY MISSTATES THE LAW AND THE FACTS AND RELIES SOLELY ON IMPROPER HEARSAY EVIDENCE

SBC Illinois started by claiming that there were 320 valid post-Order allegations. SBC Illinois quickly reduced that number to 240 when MCI pointed out that many of those allegations were in fact pre-Order allegations. After receipt of MCI's analysis of the 240 allegations and the accompanying TPV recordings, SBC Illinois now claims that there are 70 valid allegations (34 "uncontested" allegations and 36 other allegations) and 63 "questionable" allegations. See SBC Illinois Brief at pp. 21-27. SBC Illinois' argument is without any merit. The 34 "uncontested" allegations are both contested and invalid. The additional 36 allegations are also invalid and supported only by SBC Illinois' own hearsay statements. SBC Illinois' claim that 63 allegations are "questionable" because they do not involve the customer of record is both disingenuous and contrary to established law.

A. There Are Not 34 Uncontested Allegations

SBC Illinois incorrectly states that there are 34 allegations uncontested by MCI. As set forth above, MCI could only determine that seven of the 240 switches were in error, and that only two of these may have been the result of wrongful conduct. MCI challenged all other SBC Illinois allegations. SBC Illinois has the burden of proof for these allegations and failed to produce any evidence sufficient to meet that burden. Accordingly, SBC Illinois has no factual

basis for claiming that 34 allegations are “uncontested” and has produced no evidence to suggest these allegations are valid.

SBC Illinois argues that many of the allegations are “uncontested” because the MCI TPV recordings do not disprove the complaints. The fact that a TPV recording does not disprove an allegation, however, does not mean that an allegation is valid. SBC Illinois, not MCI, has the burden of proof. SBC Illinois has provided no evidence to substantiate the alleged 34 “uncontested” allegations other than SBC Illinois’ own hearsay statement that the allegations exist. SBC Illinois has produced no details, statements, or other evidence to suggest that these allegations are valid or that the allegations were in fact made by the customers in question. Since the TPV recordings demonstrated that over 95% of the alleged switching complaints were invalid, MCI does not have any reason to believe the allegations involving misrepresentations are any more likely to be valid.

B. SBC Illinois’ Claim that 63 Additional Allegations Are of “Questionable Merit” Blatantly Misstates the Law and the Facts

SBC Illinois states that 63 of its allegations have merit because MCI obtained authorization for the switch from a person other than the customer of record. SBC Illinois Brief at p. 10. SBC Illinois strongly suggests to this Commission that MCI acted in a wrongful manner when it switched these customers without the consent of the official customer of record. SBC Illinois is being disingenuous. MCI is permitted by federal law to switch a customer with the approval of a person authorized to make a change who is not the “customer of record.” Further, SBC Illinois (and all other carriers) also switches customers when it receives permission from a person who is authorized to approve the switch but who is not the official customer of record. Accordingly, SBC Illinois’ statement that these switches show a violation of the Order is

misleading and demonstrates the extent to which SBC Illinois will go in an attempt to manufacture a violation of the Order where none exists.

In AT&T Corp. v. Federal Communications Commission, 323 F.3d 1081 (D.C. Cir. 2003), it was held that carriers such as MCI are permitted under federal law to switch customers when they obtain authorization for the switch from persons other than the customer of record. The Federal Communications Commission ("FCC") had imposed a fine on AT&T for switching the accounts of two people by obtaining the consent of persons who stated they were authorized to switch the account but who were not the customers of record. The District of Columbia Court of Appeals held that AT&T was not required by the applicable federal statutes to obtain consent for a switch from the customer of record and that AT&T had acted appropriately when it switched the accounts. Id. at 1086-87.¹⁹

SBC Illinois is well aware of the AT&T decision and the applicable federal rules that apply to TPV authorization. SBC Illinois follows (and has always followed) that decision in that it switches customers from other carriers (including MCI) even if it does not receive consent from the customer of record. As with MCI, SBC Illinois only requires the person who approves the switch to state that they have authorization to do so. SBC Illinois follows this policy because the policy is lawful in every way. In representing to the Commission that MCI acted wrongfully

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The applicable federal regulations make clear that individuals other than the customer of record are permitted to change service so long as that individual is a "subscriber." Under the applicable regulations, a telecommunications carrier is permitted to change service when it receives "[a]uthorization from the subscriber" and "[v]erification of that authorization in accordance with the procedures prescribed in this section." See 47 C.F.R. § 64.1120(a)(1)(i)&(ii). As SBC is aware, these regulations define the "subscriber" as including *both* the customer of record *and* all of the individuals who are authorized to change service by the customer, as well as any other person legally authorized to represent the customer. See 47 C.F.R. § 64.1100(h).

in making switches in this manner, SBC Illinois has intentionally misrepresented the law in a blatant attempt to deceive the Commission and manufacture violations of the Order where none exist.

C. SBC Illinois' Assertion that 36 Additional Valid Allegations Exist Is Flawed

Despite prior claims by SBC Illinois of large volumes of valid allegations against MCI, the SBC Illinois Amended Verified Motion only asserts that there are 70 valid allegations dated after July 8, 2002– 34 so-called “uncontested” allegations and 36 additional allegations that SBC Illinois asserts are valid. As set forth above, the “uncontested” allegations are both contested and unsupported. The remaining 36 allegations also cannot support a violation of the Order. SBC Illinois has failed to produce any evidence to support the validity of these allegations apart from its own statement that they exist. As set forth above, such hearsay statements cannot support SBC Illinois' claim as a matter of law. See Kurdi, 161 Ill. App. 3d at 994, 514 N.E. 2d at 806; Morelli, 315 Ill. App. 3d at 497, 734 N.E. 2d at 91.

In an attempt to justify these 36 allegations, SBC Illinois provides the affidavit of Torben Poulsen who states that he listened to these TPVs and found certain discrepancies and “technical flaws.” In most of these instances, a review of the TPV recording reveals that Mr. Poulsen is either wrong or grossly overstates the issue. For example, Mr. Poulsen provides sworn testimony that account numbers (**Confidential: XXXXXX²⁰ and XXXXXX**) do not confirm service as to local service. Poulsen Affidavit ¶ 35. The TPV recordings show, however, that

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Mr. Poulsen apparently committed a typographical error by referring in his affidavit to account number (**Confidential: XXXXXX as XXXXXX**).

local service was confirmed for both numbers. See TPV recordings for **(Confidential: XXXXXX and XXXXXX)**.²¹

The remaining issues identified by Mr. Poulsen further misstate or overstate the issues with the TPV recordings. In the TPV produced for **(Confidential: XXXXXXXX)**, for example, the TPV did misstate the area code for this confirmation as "718," but *the customer* clearly recounted the correct telephone number to the TPV, including the area code. See TPV recording for **(Confidential: XXXXXXXX)**. Also, in the TPV produced for **(Confidential: XXXXXX XXX)**, the customer declined to provide his Social Security number and date of birth (although this information was requested by the TPV), but expressly gave the TPV permission to process this order without this verification information. See TPV recording for **(Confidential: XXXXXX)**. And, in the TPV produced for **(Confidential: XXXXXX)** (an automated TPV), the customer at first gave a "no" response to the question of whether she wanted to confirm her order, but changed her response to "yes" after the automated TPV stated "it sounded like you said no, just to be sure I will ask the question again." See TPV recording for **(Confidential: XXXXXX)**. At that point, the customer confirmed her service change without incident.

Thus, the alleged problems for these few recordings, where they exist at all, do not make the TPV recordings invalid. Even where there is a technical problem, such as where the TPV accidentally states the area code is "718" as opposed to "618", the technical problem with the TPV would not support a finding that MCI willfully violated the Order or that MCI acted

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In the account number **(Confidential: XXXXXX)**, the TPV received confirmation for local service. Further, in one of the two TPVs for account number **(Confidential: XXXXXX)**, the TPV also receives confirmation for local service. These TPV recordings are on file with the Commission in this docket and were part of the MCI May 12, 2003, filing in this matter.

improperly in any way. In short, Mr. Poulsen concocts “technical” violations for TPVs that are entirely acceptable.

There is another fundamental flaw in SBC Illinois’ analysis for these allegations. The fact that a technical flaw may exist in a TPV recording does not show that the underlying allegation had any validity. In other words, SBC Illinois seeks to justify its allegations with the argument that MCI cannot disprove the allegation – even though SBC Illinois never presented evidence to validate it in the first instance. Because SBC Illinois has wholly failed to meet its burden by providing this evidence, the Amended Verified Motion should be denied.

D. MCI’s Internal Documents Demonstrate Compliance With the Order

SBC Illinois argues in the SBC Illinois Brief that MCI’s documents demonstrate a violation of the Order. SBC Illinois points to continued training by MCI and documents that show that MCI terminated employees for misconduct as proof of a violation. SBC Illinois Brief at pp. 12-14. SBC is grasping at straws. To the contrary, the very documents identified by SBC Illinois demonstrate that MCI complied with the Order, continued to comply with the Order over time, and made every effort to deter and punish any violations of the Order.

First, SBC Illinois points to MCI training materials in “Flash Articles” where MCI reminds its employees not to make any misleading or untrue statements during sales calls, including any untrue or misleading statements about SBC. SBC Illinois Brief at pp. 13. In short, SBC Illinois alleges that MCI continued to provide the instructions required by the Emergency Order on an ongoing basis. This document is evidence of continued compliance – not a violation. In fact, if MCI did not give ongoing training about misrepresentations, SBC Illinois would have claimed that MCI did not take the Emergency Order seriously. If the Commission

finds that continued training constitutes evidence of a violation, it would only encourage companies to stop training its employees.

SBC next argues that MCI's termination of five employees for making misrepresentations shows a violation of the Order. SBC Brief at pp. 13-14. Again, the termination of the employees only demonstrates that MCI was aggressively implementing the requirements of the Order. The escalation documents show that where MCI was made aware of a misrepresentation, MCI terminated the employee in question to ensure that he or she would not make additional misrepresentations and to deter other employees from making misrepresentations. In short, these documents demonstrate that MCI both implemented and enforced the Order on an ongoing basis.

IV. MCI'S MARKETING PLAN DOES NOT ESTABLISH A VIOLATION OF THE ORDER.

In the Amended Verified Motion, SBC Illinois strongly insinuated that a one hundred day nationwide marketing plan that MCI conducted in early 2003 evidenced an intent to engage in misleading marketing practices. SBC Illinois Amended Verified Motion at ¶18. SBC Illinois coupled this allegation with a national press release that specifically referred to this allegation. Despite these facts, in both the SBC Illinois Brief and in discovery, SBC Illinois has failed and refused to submit any evidence that any violation of the Order occurred during the one hundred day nationwide marketing plan.²² SBC Illinois' absolute failure to present any evidence of a violation during this time again shows that SBC Illinois' Amended Verified Motion was filed for

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In fact, because SBC Illinois' statistics set forth in Section II above show that SBC Illinois' own allegations decreased dramatically during this time, the SBC Illinois Brief focuses only on allegations dated before October 2002 -- well before the one hundred day nationwide marketing plan.

the primary purpose of furthering a nationwide negative campaign against MCI and not as the result of actual violations of the Order.

V. **MCI UTILIZES EXTENSIVE POLICIES AND PROCEDURES
DESIGNED TO ENSURE COMPLIANCE WITH STATE AND FEDERAL
LAW.**

As demonstrated above, MCI has fully complied with the Order. SBC Illinois cannot prove otherwise and has failed to provide any evidence that MCI has violated the Order. MCI has complied in full with all of the actions ordered by the Commission, and SBC Illinois has not been able to identify any action that it claims MCI should have taken that it did not take. SBC Illinois also cannot deny that its own data shows that MCI has achieved a substantial, dramatic, and continuing decrease in the number of allegations against MCI. In short, MCI complied with the terms of the Order and achieved results.

Nevertheless, should the Administrative Law Judge decide that he wishes to consider the hearsay evidence proffered by SBC Illinois regarding the number of allegations relating to MCI it claims to have received, this tribunal should receive evidence of the broad array of quality control policies and procedures MCI employs to ensure quality control in telemarketing and to enhance customer service.

A. Training

The Company has adopted a Telemarketing Code of Conduct (the "Code") which was reviewed and signed by all current MCI telemarketing representatives, supervisors, managers, and agents, and is reviewed and signed by each new telemarketing representative, supervisor, manager, and agent as part of their initial training. Exhibit 2 at p. 7. Before new telemarketing representatives engage in any telemarketing activities, they are required to receive this training and sign the Code. Id. at p. 7. In addition, all MCI telemarketing representatives, supervisors, managers and agents are required by the Company to attend annual training on the policies set forth in the Code, and at the conclusion of that training, review and re-sign the Code. Id. at p. 7. A copy of the Code is provided as Exhibit 11.

B. Telemarketing Call Summarization

To ensure that MCI's residential and small business customers fully understand the products and services they have ordered during a telemarketing call, every telemarketing representative will carefully review the appropriate product during the sales call and conclude each successful sales call with a summary of the products purchased. Exhibit 2 at pp. 7-8. MCI refers to this mandatory call summarization as the Required Follow Through. Id. at p. 8. All MCI telemarketing representatives must answer accurately and fully any questions posed by customers. Id. All telemarketing representatives are trained to ensure compliance with these requirements. Further, as discussed more fully below, MCI monitors its sales representatives to ensure that they comply with the Required Follow Through on each successful sales call. Id. The salient points covered by the representative as a result of this summarization process are listed in Confidential Exhibit 12.

C. Monitoring of Telemarketing Personnel

MCI telemarketers are subject to monitoring by various internal organizations. Within each telemarketing center, center staff and in-house quality personnel monitor the quality and effectiveness of sales presentations to continuously improve sales representatives' performance. Exhibit 2 at p. 9. In addition, MCI has a national Quality Monitoring organization that is responsible for monitoring sales quality and effectiveness nationwide and engages in monitoring of telemarketing representatives at all of the sales and service centers. Id. Through their monitoring activity, quality personnel are able to evaluate call quality and provide telemarketing centers and MCI support organizations with timely information about marketing trends, sales representatives' performance, and compliance with Company policies. Id. By promoting a quality culture, quality personnel aid in the reduction of consumer complaints. Id.

MCI telemarketing representatives with a Tier 2 or Tier 3 Escalation (as described in Section G below) are referred to an enhanced monitoring system, which is designed to provide additional guidance and feedback. Representatives who continue to receive poor quality monitoring scores are terminated. Exhibit 2 at pp. 8-9.

D. MCI's Third-Party Verification ("TPV") Process

MCI utilizes TPV to verify all outbound telemarketing and inbound small business and residential telemarketing sales. Exhibit 2 at p. 9. TPV is a confirmation of carrier switches by an independent company. Id. MCI has no ownership interest in the company that provides the TPV service, and neither the TPV company nor its representatives receive any sales commissions or other install-based incentives. Id. All TPV representatives receive careful training before they are placed in the field. Id. The TPV representative is required to obtain required customer

confirmation as set forth in a script before any service change to MCI may be effected. Id. Each verification call is recorded digitally. Id.

The following points are covered in all TPV calls:

- The TPV representative identifies himself or herself as an employee of an independent confirmation company;
- The TPV representative confirms that the customer has selected MCI to replace his or her current carrier (if the customer advises that he or she has not chosen MCI, the call ends here and no switch is made);
- The TPV representative confirms that the customer is at least 18 years old and is a decision-maker who is authorized to change the service for the telephone number;
- The authorized residential customer must state his or her name, and the telephone number(s) being switched without undue prompting or suggestion by the third-party verifier;
- The TPV representative separately confirms each service to be switched—local, intralata, or interlata long distance; and
- The TPV representative obtains a verifying piece of information from the customer – for example, date of birth – to confirm that the conversation took place. See Exhibit 2 at pp. 9-10; Confidential Exhibit 5.

The TPV process is designed to neutrally verify sales authorization. Therefore, TPV representatives are not permitted to answer inquiries regarding MCI products or services. Exhibit 2 at p. 10. If a potential customer asks a question during the TPV process about an MCI product or service, the TPV representatives can either transfer the potential customer to MCI for a response, cancel the sale, or, if the customer requests, proceed with the sale and provide a toll free number to contact MCI. Id.

E. Complaint Resolution

MCI maintains a large staff of customer service representatives who are trained on an ongoing basis to handle a wide variety of customer inquiries. Exhibit 2 at p. 10. Additionally, the National Escalation Center ("NEC") researches customer concerns about specific MCI sales or service practices, and notifies MCI's sales management team in the event disciplinary action is necessary. Id. Through these practices, the NEC aids MCI in its efforts to reduce and eliminate customer complaints.

F. Credit Policy

Even with all of its quality initiatives, given the large volume of its business, a small fraction of MCI service changes do result in disputes. Exhibit 2 at p. 10. In these situations, MCI complies with applicable state and federal regulations. Id. (**Confidential: XXXXXX**

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G. Incentive and Disciplinary Provisions to Ensure Employee Compliance

The Company provides compensation incentives for telemarketing representatives, supervisors, and managers based in part on the quality of the sales generated (e.g., the percentage of sales not rejected by the third-party verification process). Exhibit 2 at p. 11. Failure to meet certain quality standards will preclude the telemarketing representative, supervisor, or manager from receiving incentive payments or commissions. Id. The Company has also established reporting to ensure that telemarketing representatives are not inappropriately motivated by unrealistic sales goals. Id. Additionally, MCI has established financial disincentives for escalations or behavior that is inconsistent with MCI policy. Id. These financial disincentives apply to the telemarketing representative as well as to their supervisor and manager. Id.

The Company has instituted a zero tolerance policy for fraudulent or improper behavior by MCI telemarketing representatives pursuant to which it terminates employees found to have violated the policy. Exhibit 2 at p. 11. (Confidential: XXXXXX XXXXXX

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detailed description of these disciplinary policies as Confidential Exhibit 13.

The Company has also developed internal sales verification processes that, among other things, audit and reject telemarketing sales prior to the PIC change for transactions that MCI has reason to believe pose an increased risk of employee misconduct. Exhibit 2 at p. 12. Any employee misconduct discovered during these internal verification procedures is addressed in accordance with these disciplinary provisions. Id.

VI. SBC ILLINOIS SHOULD BE BARRED FROM SEEKING EQUITABLE RELIEF AS IT LACKS CLEAN HANDS.

The doctrine of “unclean hands” bars a party from seeking equitable relief if it has been guilty of misconduct connected to the subject matter of the litigation. Wolfram Partnership, Ltd. v. La Salle National Bank, 262 Ill. Dec. 404, 416, 765 N.E.2d 1012, 1024 (2001); Long v. Kemper Life Ins. Co., 196 Ill. App. 3d 216, 219, 553 N.E.2d 439, 441 (1990). This doctrine precludes the complaining party from taking advantage of its own wrong, Long, at 219, 553 N.E.2d at 441, by seeking relief against the defendant for the same type of conduct that the party itself has engaged in. “[H]e who requests equity must do equity,” and if the complaining party did not act in an equitable manner toward the other party, then the claim for relief is inappropriate. Peddinghaus v. Peddinghaus, 314 Ill. App. 3d 900, 733 N.E.2d 797 (2000).

Attached as Exhibit 19 is a letter dated February 6, 2003, from David Goodman, an Ohio state senator. Exhibit 2 at p. 14. Senator Goodman is an MCI customer. He stated that he received a call from SBC suggesting that he had been "slammed" by MCI. Id. In fact, this was false. Senator Goodman had not been slammed by MCI, but the SBC representative was trying to generate consumers through their "winback" program with false information. See Exhibit 19.

MCI has conducted a survey of the alleged complainants listed by SBC Illinois in this case. See testimony of Jim Ray attached as Exhibit 20. The survey casts further doubt upon the integrity of SBC's winback campaign and its claims that MCI acted improperly with respect to these customers. MCI attempted to contact the 108 alleged complainants who either never called MCI's customer service, or who called customer service but never alleged slamming. Id. at pp. 3. MCI was able to successfully reach 25 of these 108 customers. Id. The questions asked during the survey, and a detailed description of the responses, may be found in the testimony of James Ray, attached as Exhibit 20.

In response to questions regarding their intent to file a slamming complaint against MCI, 19 of the 25 customers stated that they did not intend to file a complaint against MCI. See Exhibit 20 at pp. 3-5. Nine of them stated that SBC had encouraged them to file such a complaint. Id. In response to questions regarding whether they had been slammed by MCI, 18 respondents did not believe they were slammed by MCI. Id.²³ Seven stated it was SBC who raised the allegation of slamming, and five of those customers stated they denied SBC's

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Valid TPV exists, however, for all of the customers contacted who made post-petition complaints. TPV was not reviewed for the two consumers contacted who made pre-petition complaints.

assertion. Id. In response to questions regarding their contact with SBC, nine of the 25 respondents denied having any communication with SBC where slamming was discussed, and five of these customers do not recall having any discussions with SBC at all. Id. Yet, SBC included all of these customers among the listing of customers who it asserts had made complaints to SBC that MCI had slammed them. Id.

This survey, coupled with the Goodman letter and the analysis of the TPV recordings, constitutes persuasive evidence that:

(1) SBC Illinois has been attempting to manipulate customers into making unjustified claims of slamming against MCI;

(2) SBC Illinois has claimed that MCI slammed customers where there is not even an allegation, much less substantiation, of such conduct. In short, the evidence suggests that only a fraction of the 320 customers listed by SBC even allege slamming against MCI. Moreover, as demonstrated in Section II, *infra*, only a small percentage of those persons who allege slamming in fact have a valid complaint.

SBC Illinois responds to these facts in the SBC Illinois Motion by claiming that the process used by SBC Illinois to obtain complaints was one where SBC Illinois received only inbound calls. SBC Illinois Brief at pp. 5-6. The investigation and evidence set forth above, however, strongly suggests either that SBC Illinois does not have this policy or that the policy is not being followed. The SBC Illinois Motion provides no explanation of how customers who claim they never spoke with SBC Illinois and further claim they were not wronged by MCI found their way onto SBC Illinois' list of supposedly valid allegations. Further, as shown above at pages 14 and 27, SBC Illinois has engaged in deceitful conduct in the present matter in an

apparent attempt to gain an advantage in this litigation and in the public eye. SBC Illinois' behavior, which is reckless at best, deprives it of the "clean hands" which are a prerequisite to obtaining equitable relief.

CONCLUSION

SBC Illinois cannot meet its burden of proof of demonstrating a violation of the Order by MCI. To the contrary, MCI has conclusively proven that it has undertaken the remedial actions required by the Order and therefore fully complied with its terms. MCI has also shown that SBC Illinois' allegations against MCI have declined dramatically since the Order – **(Confidential: XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXX)**. Indeed, SBC Illinois' own data shows that its allegations against MCI have decreased by 67% since the Order.

SBC Illinois has the burden of proving a violation of the Order, and Illinois law requires that it produce admissible evidence of the alleged violations. Illinois law is clear that SBC Illinois may not use hearsay evidence in an administrative proceeding to prove a violation. Almost all of SBC Illinois' "evidence," however, consists of its own statements that it allegedly received allegations from consumers. Such statements constitute improper hearsay evidence and cannot be used to support a finding that MCI violated the Order.

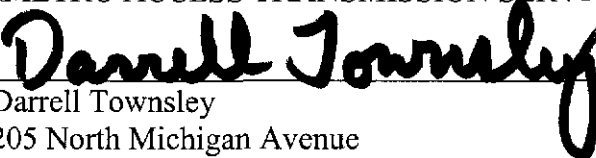
SBC Illinois' "evidence" not only constitutes improper hearsay, but it also fails to show the validity of the alleged complaints. SBC Illinois admitted that 80 of the 320 allegations that it submitted should not be considered in connection with this Motion. Of the remaining 240 allegations, the great majority can be disproven by MCI's TPV recordings. In fact, in the present motion, SBC Illinois now only claims that there are 70 valid complaints since July 2002.

Although SBC Illinois has failed to even substantiate these claims, this low figure further proves that MCI has succeeded in dramatically decreasing its complaint levels and has not violated the Order.

For the reasons set forth above, SBC Illinois' motion should be denied.

Respectfully submitted,

MCI COMMUNICATIONS, INC. AND
MCIMETRO ACCESS TRANSMISSION SERVICES

By: 

Darrell Townsley
205 North Michigan Avenue
Suite 1100
Chicago, IL 60601
Ph: 312.260.3533
Fax: 312.470.5571
e-mail: darrell.townsley@mci.com

James R. Denniston
205 North Michigan Avenue
Suite 1100
Chicago, Illinois 60601
(312) 260-3190
facsimile: (312) 470-5571
e-mail: james.denniston@mci.com

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Bell Telephone Company)	
)	
Complainant)	
)	
)	
vs.)	Docket No. 02-0443
)	
MCI WorldCom Communications, Inc.)	
MCImetro Access Transmission Services, LLC)	
MCI WorldCom Communications, Inc. f/k/a)	
MFS Intelenet)	
)	
Respondents.)	

AFFIDAVIT OF DARRELL TOWNSLEY

STATE OF ILLINOIS)	
)	SS
COUNTY OF COOK)	

I, Darrell Townsley, being first duly sworn on oath, state as follows:

1. My name is Darrell Townsley and I am one of the attorneys who represents MCI WorldCom Communications, Inc. and its affiliated companies (collectively "MCI") in the above-captioned proceeding.
2. I have reviewed the attached Confidential Version of the Verified Opposition Of MCI To SBC Illinois' Brief In Support Of Amended Verified Motion For Enforcement Of Order Granting Emergency Relief and the attached Public Version of the Verified Opposition Of MCI To SBC Illinois' Brief In Support Of Amended Verified Motion For Enforcement Of Order Granting Emergency Relief.
3. The attached Confidential Version of the Verified Opposition Of MCI To SBC Illinois' Brief In Support Of Amended Verified Motion For Enforcement Of Order Granting Emergency Relief and the attached Public Version of the Verified Opposition Of MCI To SBC Illinois' Brief

In Support Of Amended Verified Motion For Enforcement Of Order Granting Emergency Relief, which are being filed in the above-captioned proceeding on behalf of MCI WorldCom Communications, Inc. and its affiliated companies, were prepared by me or under my direction and control and the statements and information contained in this affidavit and the attached Confidential Version of the Verified Opposition Of MCI To SBC Illinois' Brief In Support Of Amended Verified Motion For Enforcement Of Order Granting Emergency Relief and the attached Public Version of the Verified Opposition Of MCI To SBC Illinois' Brief In Support Of Amended Verified Motion For Enforcement Of Order Granting Emergency Relief are true and correct, to the best of my knowledge, information and belief.

Darrell Townsley
Darrell Townsley

SUBSCRIBED AND SWORN to
before me this 1st day of December, 2003.

Camille Bates
Notary Public

My commission expires on August 9, 2005



**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Bell Telephone Company

Complainant

vs.

Docket No. 02-0443

MCI WorldCom Communications, Inc.

MCI Metro Access Transmission Services, LLC

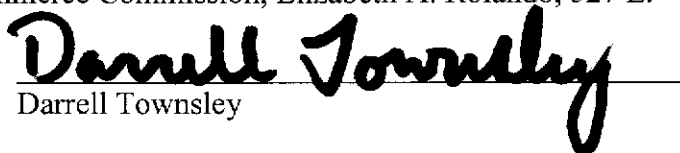
MCI WorldCom Communications, Inc. f/k/a

MFS Intelenet

Respondents.

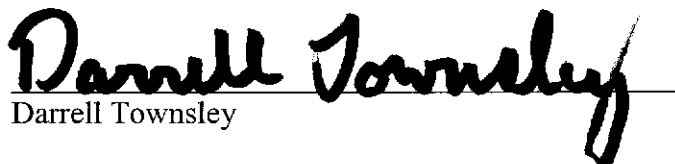
NOTICE OF FILING

Please take notice that on December 1, 2003, I caused to be sent by Federal Express Next Business Day Delivery, postage prepaid, a Confidential Version of the Verified Opposition Of MCI To SBC Illinois' Brief In Support Of Amended Verified Motion For Enforcement Of Order Granting Emergency Relief and a Public Version of that same document in the above-captioned matter to the Chief Clerk of the Illinois Commerce Commission, Elizabeth A. Rolando, 527 E. Capitol, Springfield, Illinois 62701.


Darrell Townsley

CERTIFICATE OF SERVICE

I, Darrell Townsley, certify that I caused to be served from MCI's Chicago, Illinois offices a Confidential Version of the Verified Opposition Of MCI To SBC Illinois' Brief In Support Of Amended Verified Motion For Enforcement Of Order Granting Emergency Relief and a Public Version of that same document in the above-captioned matter, together with a Notice of Filing, upon all parties on the attached service list on this 1st day of December, 2003, via one or more of the following methods of delivery: electronic mail, Federal Express next business day delivery, and First Class United States Mail, postage prepaid.


Darrell Townsley

Darrell Townsley
205 North Michigan Avenue, Suite 1100
Chicago, Illinois 60601
Tel: (312) 260-3533
Fax: (312) 470-5771
email: darrell.townsley@mci.com

Illinois Commerce Commission
Docket No: 02-0443
Service List

David Gilbert
Administrative Law Judge
Illinois Commerce Commission
160 North LaSalle Street
Suite C-800
Chicago, IL 60601-3104

Brandy Brown
Office of the General Counsel
Illinois Commerce Commission
160 North LaSalle Street
Suite C-800
Chicago, IL 60601-3104
E-Mail: bbrown@icc.state.il.us

James Huttenhower
Illinois Bell Telephone Company
225 West Randolph Street
Suite 25-D
Chicago, IL 60606
E-Mail: jh7452@sbcc.com

Cindy Jackson
Case Manager
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62794-928-
E-Mail: cjackson@icc.state.il.us

Rhonda J. Johnson
Vice President
Regulatory
Illinois Bell Telephone Company
555 Cook St., Fl. 1E
Springfield, IL 62721
E-Mail: rhonda.j.johnson@msg.ameritech.com

Mark A. Kerber
Counsel
Illinois Bell Telephone Company
225 West Randolph Street
Floor 25D
Chicago, IL 60606
E-mail: mark.a.kerber@ameritech.com

Thomas R. Stanton
Office of the General Counsel
Illinois Commerce Commission
160 North LaSalle Street
Suite C-800
Chicago, IL 60601-3104
E-Mail: tstanton@icc.state.il.us

Darrell Townsley
MCI WorldCom, Inc.
205 North Michigan Avenue
11th Floor
Chicago, IL 60601
E-Mail: darrell.townsley@mci.com